

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JASON FRYE,

Plaintiff,

v.

CAROLYN COLVIN, Acting Commissioner
of Social Security,

Defendant.

Case No. 3:14-cv-00523-MMD-VPC

ORDER ACCEPTING ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
VALERIE P. COOKE

Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 20) regarding Jason Frye's Motion to Remand ("Plaintiff's Motion") (dkt. no. 13) and Defendant Carolyn Colvin's Cross Motion to Affirm ("Defendant's Motion") (dkt. no. 15). On November 16, 2015, Judge Cooke entered the R&R, recommending that Plaintiff's Motion be granted and Defendant's Motion be denied. (Dkt. no. 20.) The parties had until December 3, 2015 to object to the R&R. To date, no objections have been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a


1 magistrate judge's report and recommendation where no objections have been filed. See
2 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
3 of review employed by the district court when reviewing a report and recommendation to
4 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
5 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
6 view that district courts are not required to review "any issue that is not the subject of an
7 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
8 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
9 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
10 which no objection was filed).

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in
12 order to determine whether to adopt the R&R. The R&R finds that the ALJ did not err in
13 her assessment of the severity of Plaintiff's impairments or the adverse side effects of
14 Plaintiff's medications, and in her rejection of Dr. Peddu's ("Plaintiff's treating
15 physician's) medical opinion. The R&R determines, however, that legal error occurred at
16 the fifth step of the sequential process because the ALJ failed to address the entirety of
17 Dr. Debattista's medical opinion and to adequately consider all the functional limitations
18 contained in that opinion when examining the vocational expert. Accordingly, the
19 Magistrate Judge recommends that Plaintiff's Motion (dkt. no. 13) be granted and
20 Defendant's Motion (dkt. no. 15) be denied. Upon review of the R&R and the records in
21 this case, the Court agrees with the Magistrate Judge and adopts the R&R in full.

22 It is ordered that the Report and Recommendation of Magistrate Judge Valerie P.
23 Cooke (dkt. no. 20) is accepted and adopted. Plaintiff's Motion to Remand (dkt. no. 13) is
24 granted and Defendant's Cross Motion to Affirm (dkt. no. 15) is denied.

25 The Clerk is directed to enter judgment pursuant to this Order and close this case.

26 DATED THIS 22nd day of December 2015.

27 
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE